

BTR ENGINEERING (AUSTRALIA) LTD V DANA CORPORATION & ORS [2000] VSC 246

Supreme Court of Victoria - 14 June 2000

FACTS

BTR and Dana entered into an agreement whereby Dana agreed to purchase particular assets from BTR.

A dispute arose between the parties in relation to the forecast of earnings for the business for the year 2000. Dana informed BTR that they did not propose to complete the agreement. The agreement included that a dispute resolution clause providing that any dispute involving their rights and obligations under the agreement would first be subject to negotiations for 60 days and then referred to arbitration.

BTR issued proceedings in the Supreme Court for specific performance or for damages for breach of agreement. Dana served upon BTR a notice of dispute pursuant to clause 7.9 of the agreement (“the dispute clause”) and subsequently applied to the court for a stay of the legal proceeding.

ISSUE

Was the lengthy process to settle the dispute a factor for the court to consider when deciding whether to stay the proceeding? Were all the disputes between the parties involving rights and obligations under the agreement?

FINDINGS

The dispute resolution clause indicates that the parties intended to confine the matters to be referred to arbitration to matters to their rights and obligations under the agreement and not any other matters. Therefore, the clause could not be construed to encompass claims that are not within the scope of the arbitration agreement because it would be contrary to the intention of the parties.

The court will not grant a partial stay of proceedings if it leads to unnecessary multiplicity of proceedings with attendant cost and a prejudice and a risk of inconsistent findings of facts. While some of the claims made by Dana were covered by the arbitration clause the other claims were not and should not be heard separately. Therefore, the court refused to grant the stay of proceedings.

QUOTE

Warren J said:

“The parties have agreed to resolve their disputes in a particular manner and having so agreed are bound by such arrangements unless there is a good reason to depart from it. If the parties believe that the proceedings in the Commercial List will be heard and determined more quickly than arbitration proceedings, then BTR must have been aware of these matters at the time they entered into the agreement including their acceptance of the framework contained in the clause 7.9 of the agreement. It must be observed that they agreed to be subject to the actual or potential prejudice that may occur as a result of the application of the procedures contained in that clause.”

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IMPACT

If the parties have agreed to refer matters to arbitration by inserting an arbitration clause into their agreement, then they are bound by the clause despite some inconvenience faced by them including the length of time taken to resolve the matter by negotiations and/or arbitration.

However only disputes that fall within the arbitration agreement can be subject to arbitration. If the court considers that granting of a stay of a proceeding will lead to unnecessary multiplicity of proceedings with attendant of cost and a prejudice and the risk of inconsistent findings of facts, then such in situation the court will generally not grant the application.

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